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Deputy Commissioner
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Assistant Chief Counsel
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

| | | |
|--------------------------------|---|-----------------------------|
| In the Matter of: |) | Escrow License No. 963-2272 |
| |) | |
| THE COMMISSIONER OF BUSINESS |) | OAH Case No. 2015010699 |
| OVERSIGHT OF THE STATE OF |) | |
| CALIFORNIA, |) | SETTLEMENT AGREEMENT |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| AMERICAN LIBERTY ESCROW, INC.; |) | |
| GILBERT PINO; and |) | |
| MIRTYS RODRIGUEZ, |) | |
| |) | |
| Respondents. |) | |

This Settlement Agreement is entered into between Respondent Mirtys Rodriguez, (“Rodriguez”) and Complainant the Commissioner of Business Oversight (“Commissioner”), and is made with respect to the following facts:

RECITALS

A. American Liberty Escrow, Inc. (“American”) is an escrow agent holding a license issued by the Commissioner pursuant to the Escrow Law (Financial Code section 17000 et seq.). Its principal place of business is 555 Parkcenter Drive #100, Santa Ana, California 92705.

B. At all relevant times, Rodriguez was American’s escrow officer whose application to

be escrow manager was never completed.

C. On or around December 19, 2014, the Commissioner issued to Rodriguez the following: Notice of Intention to Issue Order Pursuant to California Financial Code Section 17423 (Bar From Employment, Management or Control of Any Escrow Agent); Accusation in Support of Revocation of License and Order Barring From Employment, Management, or Control; Statement to Respondent; blank Notice of Defense; and Government Code Sections 11507.5, 11507.6 and 11507.7 relating to discovery (“Accusation”).

D. On or around December 26, 2014, Rodriguez was served by the Commissioner with the Accusation.

E. On or around December 29, 2014, Rodriguez timely filed a Notice of Defense with the Commissioner in the matter regarding the Accusation.

F. Currently a hearing at the Office of Administrative Hearings is scheduled to commence on July 6, 2015 through July 10, 2015.

It is the intention and desire of the parties to resolve these matters without the necessity of a hearing and/or other litigation.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree as follows:

TERMS AND CONDITIONS

1. Purpose. This Settlement Agreement is entered into for the purpose of judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

2. No Admission. Rodriguez voluntarily enters into this settlement agreement without admitting or denying any of the allegations contained in the Accusation and without admitting any wrongdoing.

3. Order Suspending. Rodriguez hereby agrees to the issuance by the Commissioner of an order suspending Rodriguez from any position of employment, management, or control of any escrow agent by an escrow agent for a period of one year. The suspension order shall become

1 effective upon execution of this Settlement Agreement. A copy of the suspension order is attached
2 and incorporated herein as Exhibit A.

3 4. Waiver of Hearing Rights. Rodriguez acknowledges her right to an administrative
4 hearing under Financial Code section 17423 in connection with the Accusation and the suspension
5 and hereby waives her right to a hearing, and to any reconsideration, appeal, or other rights which
6 may be afforded pursuant to the Escrow Law, the Administrative Procedure Act, the Code of Civil
7 Procedure, or any other provision of law in connection with this matter.

8 5. Duration of Suspension. The parties hereby agree that Rodriguez, once she has
9 completed the suspension set forth in paragraph 3 above, shall not be prohibited from any position
10 of employment by an escrow agent by reason of the one-year suspension or the acts alleged in the
11 Accusation so long as Rodriguez has complied with the requirements of the Escrow Law.

12 6. Full and Final Settlement. The parties hereby acknowledge and agree that this
13 Settlement Agreement is intended to constitute a full, final and complete resolution of the
14 Accusation and that no further proceedings or actions will be brought by the Commissioner in
15 connection with these matters either under the Escrow Law or any other provision of law, excepting
16 therefrom any proceeding or action if such proceeding or action is based upon facts not presently
17 known to the Commissioner or which were knowingly concealed from the Commissioner by
18 Rodriguez or is based upon failure to abide by any of the terms in this Settlement Agreement.

19 7. Commissioner's Duties. The parties acknowledge and agree that nothing contained
20 in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any other
21 agency (city, county, state or federal) with any prosecution, administrative, civil or criminal,
22 brought by any such agency against Rodriguez or any other person based upon any of the activities
23 alleged in these matters or otherwise.

24 8. Binding. This Settlement Agreement is binding on all heirs, assigns and/or
25 successors in interest.

26 9. Future Actions by Commissioner. This Settlement Agreement may be revoked and
27 the Commissioner may pursue any and all remedies available under law against Rodriguez if the
28 Commissioner later discovers that Rodriguez knowingly or willfully withheld information used and

1 relied upon in this Settlement Agreement.

2 10. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
3 it has received independent advice from its attorney(s) and/or representatives with respect to the
4 advisability of executing this Settlement Agreement.

5 11. Full Integration. Each of the parties represents, warrants, and agrees that in
6 executing this Settlement Agreement it has relied solely on the statements set forth herein and the
7 advice of its own counsel. Each of the parties further represents, warrants, and agrees that in
8 executing this Settlement Agreement it has placed no reliance on any statement, representation, or
9 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
10 failure of any party or any other person or entity to make any statement, representation or disclosure
11 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
12 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to
13 preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of
14 this Settlement Agreement.

15 12. Presumption from Drafting. In that the parties have had the opportunity to draft,
16 review and edit the language of this Settlement Agreement, no presumption for or against any party
17 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
18 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive
19 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
20 of uncertainty, language of a contract should be interpreted most strongly against the party who
21 caused the uncertainty to exist.

22 13. Voluntary Agreement. Rodriguez enters into this Settlement Agreement voluntarily
23 and without coercion and acknowledges that no promises, threats or assurances have been made by
24 the Commissioner or any officer, or agent thereof, about this Settlement Agreement, except as
25 expressly provided herein.

26 14. Waiver, Modification, and Qualified Integration. The waiver of any provision of
27 this Settlement Agreement shall not operate to waive any other provision set forth herein, and any
28 waiver, amendment and/or change to the terms of this Settlement Agreement must be in writing and

signed by the parties.

15. Counterparts. The parties agree that this Settlement Agreement may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original. A fax signature shall be deemed the same as an original signature. Such counterparts shall together constitute and be one and the same instrument.

16. Headings and Governing Law. The headings to the paragraphs of this Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Settlement Agreement shall be construed and enforced in accordance with and governed by California law.

17. Effective Date. This Settlement Agreement shall not become effective until signed and delivered by all parties.

18. Notice. Any notice required under this Settlement Agreement shall be addressed as follows:

To Rodriguez:

Benjamin Berger
Berger Harrison, A Professional Law Corporation
114 Pacifica, Suite 280
Irvine, California 91618

To the Commissioner:

Sophia C. Kim
Counsel, Enforcement Division
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013-2344

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1 19. Authority to Execute. Each signator hereto covenants that he/she possesses all
2 necessary capacity and authority to sign and enter into this Settlement Agreement.

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4 Dated: 6/19/15

JAN LYNN OWEN
Commissioner of Business Oversight

5
6 By _____
7 MARY ANN SMITH
8 Deputy Commissioner

9
10 Dated: 6/19/15

By _____
11 MIRTYS RODRIGUEZ

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13
14
15 **APPROVED AS TO FORM:**

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17 _____
18 BENJAMIN BERGER
19 Berger Harrison, A Professional Law Corporation
20 Counsel for Mirtys Rodriguez
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